

*Before Hemant Gupta & Rajiv Narain Raina, JJ.*

**SUKHDEV SINGH AND OTHERS—Petitioners**

*versus*

**DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD.**

**AND OTHERS—Respondents**

**CWP No.12904 of 2012**

27th August 2012

*Constitution of India, 1950 - Art. 14 & 16 - Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) - Appointment as Asst. Linemen - Earlier basic qualification was matriculation with two years ITO Course - Asst. Linemen entitled to promotion as Jr. Engineer - On 18.9.2002 service Rules amended and only such Asst Linemen were*

*entitled to promotion as those having AMIE/BE degree or three years diploma while working on lower post - Challenge is to amending notification which contains no provision to consider persons possessing metric with ITI for promotion - Held that classification of posts on basis of higher educational qualification is legally permissible - Writ petition dismissed*

*Held*, That classification of posts on the basis of higher educational qualification is legally permissible as can be culled out from numerous decisions of the Supreme Court.

(Para 4)

*Further held*, That no one has a fundamental right to promotion. It is always open to an employer consistent with the efficiency of administration on cadre review to prescribe higher qualifications for promotional posts and exclude lesser qualified feeder category sources from the zone of consideration. The result of exclusion of the petitioners from promotional avenues may appear to be drastic but it is a natural consequence of the legislative exercise expressed through the impugned amendment. So long as there is a reasonable classification which has nexus with the object sought to be achieved of bringing in higher qualified Junior Engineers in the field to keep stride with continuing demands of modernising key public utilities like the respondent Corporation at hand, we cannot castigate as arbitrary, unreasonable or perverse, the amendment of the kind carried out in larger public interest. The notification cannot be said to be contrary to Article 14 or 16 of the Constitution.

(Para 6)

Sushil Jain, Advocate, *for the petitioners.*

**RAJIV NARAIN RAINA, J.**

(1) Prior to 18.09.2002, the basic qualification for appointment to the post of Assistant Linemen in the respondent - Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) was matriculation with two years ITI course from any recognized institute. Assistant Linemen were entitled to promotion to the post of Junior Engineer. However, on 18.09.2002, the rules governing service were amended. The amendment allows only such Assistant Linemen

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to further promotion as Junior Engineers as have the AMIE/BE degree or three years diploma while working on the lower post. The amending notification dated 18.09.2002 contains no provision to consider persons possessing matric with ITI in the respective trade for promotion to the post of Junior Engineer. This amendment has been challenged in this petition.

(2) It is submitted that at the time of direct appointment of Assistant Linemen prior to amendment, certain persons having diploma qualification had been given benefit of higher qualification when the minimum qualification prescribed was matric with ITI. Those higher qualified direct recruits had filed an undertaking/affidavit before the authorities at the time of appointment that they will not claim any out of the way benefit by ignoring seniority for further promotion. Now by the impugned amendment, the petitioners have been left in the lurch and resultantly, the seniority list of Assistant Linemen has been separated by operation of new rules on the basis of qualifications, when earlier there was a combined seniority list.

(3) Mr. Sushil Jain, learned counsel appearing for the petitioners in his challenge to the vires of the amendment dated 18.09.2002 (P-6) effected through notification revising the Recruitment and Promotion Policy of Non-Gazetted Technical staff notified through erstwhile Haryana State Electricity Board notification dated 10.10.1988 read with notifications dated 14.03.1990 and 19.05.1995 submits that the notification is arbitrary inasmuch as it excludes the petitioners from consideration for promotion to the post of Junior Engineer (Field) altogether on the basis of enhancement of qualification which they do not possess. The pre-amendment ratio of filling up the post of Junior Engineer (Field) was 60% by direct recruitment and 40% by promotion on the principle of seniority-cum-merit. However, the amendment has reduced direct recruitment from 60% to 40% while maintaining the promotee quota of categories falling under Para 1.4.2 but has carved out a 20% quota to be filled by promotion on seniority-cum-merit basis from amongst all technical cadres- subordinate staff, such as that this new 20% quota had no earlier place in the scheme of promotion. The amendment impugned reads as follows:-

*"20% quota will be filled up by promotion on seniority-cum-merit basis from amongst all technical cadres subordinate staff, such as AFM/SSA/LMA/ASSA/ALM/SA/Lab. Attendant/*

*Meter Mechanic/Lab Assistant/helper Gr.I, helper Gr.II/ RWM/T.Mate/Draftsman/Instrument Mech. Etc. possessing the qualification of BE/AMIE in Electrical/Mechanical/ Electronics Engineering or 3 Years Diploma in Electrical/ Mechanical/Electronics Engineering provided they have 3 years service experience on 31st March, 2002 on the above post of JE/Field. The ranking list in respect of employees possessing BE/AMIE/3 Years Diploma qualification as stated above with 3 years experience shall be prepared on 1st August of each year (as existed on 31/7) and shall be valid for one year. The inter-se seniority of the selected persons in the ranking list shall be determined according to scale of pay last drawn with the employee drawing higher scale of pay being ranked senior. If scale of pay drawn by two or more such employees is same, the date of regular initial appointment and if such service is also of similar length then the older employee shall rank senior to the younger employee."*

(4) In his challenge to the notification, Mr. Jain has relied upon the judgments of the Supreme Court in **Chandravathi P.K. and others versus C.K. Saji and others (1)**, **P. Murugesan and others versus State of Tamil Nadu and others (2)**, **Punjab State Electricity Board Patiala and another versus Ravinder Kumar Sharma and others (3)**, **Food Corporation of India & Ors. versus Parshotam Das Bansal & Ors. (4)** and the judgment of this Court in **Haryana State Electricity Board, Panchkula versus Kartar Singh (5)** and the judgment of the Delhi High Court in **S.P. Dubey and etc. versus Municipal Corporation of Delhi and others (6)**.

(5) Classification of posts on the basis of higher educational qualification is legally permissible as can be culled out from numerous decisions of the Supreme Court which need no further dilation in the present

- (1) 2004(2) RSJ 218
- (2) (1993) 2 SCC 340
- (3) 1986(4) SCC 617
- (4) 2008(2) RSJ 353
- (5) 1994(2) SCT 601
- (6) 2003(2) SCT 725

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case. Reference can be made to **Roop Chand Adlakha and others versus Delhi Development Authority and others (7)**, **Shailendra Dania and others versus S.P. Dubey and others (8)**. **The State of Jammu and Kashmir versus Shri Triloki Nath Khosa and others (9)**, **Mohammad Shujat Ali and others versus Union of India and other (10)**, **M. Rathinaswami and others versus State of Tamil Nadu and others (11)** and **The General Manager, South Central Railway Secunderabad and another versus A.V.R. Siddhanti and others (12)**.

(6) It is also well settled by now that no one has a fundamental right to promotion. It is always open to an employer consistent with the efficiency of administration on cadre review to prescribe higher qualifications for promotional posts and exclude lesser qualified feeder category sources from the zone of consideration. The result of exclusion of the petitioners from promotional avenues may appear to be drastic but it is a natural consequence of the legislative exercise expressed through the impugned amendment. A careful reading of the decisions relied upon by Mr. Jain actually negate his case and blunt his challenge to the vires of the 2002 Amendment. So long as there is a reasonable classification which has nexus with the object sought to be achieved of bringing in higher qualified Junior Engineers in the field to keep stride with continuing demands of modernising key public utilities like the respondent Corporation at hand, we cannot castigate as arbitrary, unreasonable or perverse, the amendment of the kind carried out in larger public interest. The notification cannot be said to be contrary to Article 14 or 16 of the Constitution. The bifurcation of seniority following the amendment in 2002 would be inevitable. It would always be open to the petitioners to equip themselves with higher qualifications while in service to measure up to the new demands of the job of Junior Engineers (Field). That option does not stand foreclosed.

(7) For the reasons aforesaid, we do not find any unconstitutionality in the notification dated 18.09.2002 (P-6).

(8) The petition is accordingly dismissed.

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**M. Jain**

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(7) 1989 Supp (1) SCC 116

(8) (2007) 5 SCC 535

(9) (1974) 1 SCC 19

(10) (1975) 3 SCC 76

(11) (2009) 5 SCC 625

(12) (1974) 4 SCC 335